

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 6743

Investigation concerning possible sanctions       )  
relating to Green Mountain Power Corporation's   )  
alterations of the West Danville Dam               )

Order entered: 7/20/2005

**ORDER APPROVING STIPULATION AND CLOSING DOCKET**

**I. INTRODUCTION**

In 1995, Green Mountain Power Corporation ("GMP" or the "Company") performed certain modifications to its West Danville Dam, located on Joes Pond. On August 7, 2002, in response to an inquiry from the Joes Pond Association ("JPA"), the Vermont Public Service Board ("Board") issued an Order opening an investigation into whether the work performed by GMP required Board approval. The Order stated: "The primary issue to be addressed will be whether the work at the dam required Board approval. The investigation will also consider the remedies (if any) provided for under the law for the failure by GMP to obtain any required Board approval."

GMP has acknowledged that Board approval was required, pursuant to 10 V.S.A. Ch. 43, for the modifications that it made at the West Danville Dam<sup>1</sup> and, therefore, this issue has been settled. Consequently, the only remaining issue to be resolved in this Docket involves the remedies, if any, that should apply.

On June 13, 2005, a Settlement Stipulation ("Stipulation") was filed by the Vermont Department of Public Service ("Department"), GMP, the Vermont Agency of Natural Resources ("ANR"), and JPA. (A copy of the Stipulation is attached to this Order.) In this proposal for decision I recommend that the Board approve the Stipulation and close the Docket.

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1. See the Settlement Stipulation at page one, filed in this Docket on June 13, 2005.

## **II. FINDINGS**

1. The Stipulation provides that GMP, within thirty days of this Order, will make a payment in the amount of \$50,000 to be used for the general benefit of Joes Pond. Stipulation at 5.

2. The Stipulation states:

The Company's payment and undertakings set forth herein shall be in full settlement of any and all claims relating to 10 V.S.A. Chapters 41, 43 or 47, or 30 V.S.A. § 248 (including claims for penalties, sanction or other requirements under 10 V.S.A. Chapter 201 or 30 V.S.A. §§ 30, 247) relating to modifications to the Dam at any time prior to the date hereof and any other claims relating to the above statutes that could have been brought based on information available to the Department and ANR in the course of this investigation. Nothing in this paragraph shall be construed to limit any party or any individual from pursuing a claim for any damages alleged to have resulted from the actions of Green Mountain Power.

Stipulation at 5.

3. Under the terms of the Stipulation, \$50,000 is to be paid into an escrow account "in favor of ANR and JPA and requiring approval by representatives of both ANR and JPA for withdrawals from the escrow account." Stipulation at 5.

4. The Stipulation provides that the \$50,000 is to be disbursed in the following manner:

The Parties agree that the Payment Amount above shall be paid within 30 days after the Board's final order by the Company into an escrow account in favor of ANR and JPA and requiring approval by representatives of both ANR and JPA for withdrawals from the escrow account. The funds deposited in the account and any interest thereon shall be called the Joes Pond Settlement Fund, or something similarly identifying, and shall be used for the benefit of Joes Pond for the projects described below at approximately the funding levels listed for each. A work plan shall be created by the Settlement Fund Committee ("SFC") identifying the activities for that calendar year no later than 30 days prior to the commencement of activities for that year. The SFC shall consist of two representatives from the JPA and two from ANR. The ANR and JPA representatives authorized to approve the withdrawal of funds from the escrow account shall make the funds available for the proposed work activities provided the work plan for that calendar year is consistent with the activities listed below in subsections b through e.

Milfoil Prevention Program: \$12,000 will be spent on milfoil prevention Pond over four summer seasons (\$3000 for 4 years) that will include 'watchers'

and possible 'searchers' and other preventive milfoil activities as may be determined by the SFC.

Beach Water Improvement Project: \$8500 will be remitted to the West Danville Community Club for the purpose of improving the potable water supply, toilets, and sinks at the public beach on Joes Pond. Any excess funds after the completion of these improvements shall be utilized at the discretion of the West Danville Community Club for improvements at the public beach area.

Water Quality and Ecological Integrity Programs: \$29,500 total. These programs are to improve the water quality and ecological integrity of Joes Pond by the establishment of natural buffers around the lake. It will assist all who live around Joes Pond with the management of shorelands for wildlife and water quality. Components include approximately (1) (\$8000 for a demonstration project for landscaping and plantings at the public beach; (2) \$3000 for a demonstration project for landscaping and plantings at the JPA Pavilion building and some shoreline stabilization including the dock area; (3) \$3000 for a landscape architect to design the above planting projects and to develop a generic plan for camp owners; (4) \$15,500 total for 5 years (\$3100 for 5 years) for plant material and education for shoreline buffers at camp owner properties around Joes Pond.

At the end of the fifth year following the approval of this stipulation, if any money is not used ("Remainder Money"), the SFC can determine by mutual agreement what other uses shall be made of Remainder Money to the benefit of the Joes Pond area. If consensus is reached as to the use(s) of Remainder Money then that decision does not have to be approved by the Public Service Board. However, if consensus cannot be reached as to Remainder Money, the dispute shall be brought back to and resolved by the Board.

Stipulation at 5–7.

### **III. DISCUSSION AND CONCLUSION**

The reconstruction of the West Danville Dam was approved, pursuant to 10 V.S.A. Ch. 43, in Docket 6828. On April 27, 2005, the Board issued an order closing Docket 6828. With the filing of the Stipulation, there are no remaining issues to be resolved in this matter.

The Stipulation provides a reasonable resolution of the issue of sanctions. Accordingly, I recommend that the Board approve the Stipulation and close this Docket.

This proposal for decision has not been served on the parties pursuant to 3 V.S.A. § 811, as it is not adverse to the interests of any party.

Dated at Montpelier, Vermont, this 19<sup>th</sup> day of July, 2005.

s/Ed McNamara  
Edward McNamara, Esq.  
Hearing Officer

**IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The Hearing Officer's Findings and recommendations are adopted.
2. The Settlement Stipulation, filed with the Board on June 13, 2005, is approved.
3. This Docket shall be closed.

Dated at Montpelier, Vermont, this 20<sup>th</sup> day of July, 2005.

<u>s/Michael H. Dworkin</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: July 20, 2005

ATTEST: s/Susan M. Hudson

Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*